

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

GABE BEAUPERTHUY, et al. on behalf  
of themselves and all others  
similarly situated,

Plaintiffs,

v.

24 HOUR FITNESS USA, INC., a  
California corporation d/b/a 24  
Hour Fitness; SPORT AND FITNESS  
CLUBS OF AMERICA, INC., a  
California corporation d/b/a 24  
Hour Fitness,

Defendants.

No. 06-0715 SC

ORDER GRANTING  
DEFENDANTS' MOTION  
FOR LEAVE TO FILE  
SURREPLY

Pending before the Court is a Motion by Plaintiffs Gabe Beauperthuy et al. ("Plaintiffs") for Facilitated Notice Pursuant to Fair Labor Standards Act, 29 U.S.C. §216(b). See Docket No. 69. Defendants 24 Hour Fitness et al. have requested Leave to File a Surreply in response to Plaintiffs' Reply submitted in regard to this pending Motion. In support of their request for leave, Defendants point to three sections in Plaintiffs' Reply brief which, Defendants claim, are without corollaries in Plaintiff's Motion brief:

1) arguments regarding positions purportedly taken by Defendants in the Boyce litigation as to whether certain groups met the typicality requirements of Rule 23;

2) arguments regarding the alleged non-payment by  
Defendants of certain commission payments; and

3) arguments as to whether the statute of limitations  
issue is an issue for the jury as opposed to the Court.

See Defendant's Motion for Leave at 2-3.

The Court finds that these sections present material not  
raised in Plaintiffs' Motion. The Court will consider this  
material in making its determination, and so, in the interests of  
justice, Defendants must be granted an opportunity to respond.

See In re Pacific Gas and Elec. Co., C-02-1550 VRW, 2002 WL  
32071634, \*4 (N.D. Cal. Nov. 14, 2002).

Accordingly, the Court hereby GRANTS Defendants leave to file  
a surreply of not more than ten (10) pages addressing only the  
three arguments made in Plaintiffs' Reply which are identified  
above. The surreply must be filed no later than ten (10) days  
after the date of this order. The hearing date for Plaintiffs'  
Motion for Facilitated Motion is hereby reset for February 9,  
2007.

IT IS SO ORDERED.

Dated: January 11, 2007.



UNITED STATES DISTRICT JUDGE